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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re PATENT application of
DODRILL et al.

Group Art Unit: 2153

Application No. 09/605,848

Examiner: Strange

Filed: June 29, 2000

Docket: 95-418

Title: IP Unified Agent Using An XML Voice Enabled
Web Based Application Server

Date: January 28, 2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

- 1 ☐ **NOTICE OF APPEAL:** Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision (not Advisory Action) of the Examiner dated February 15, 2007
- 2 ☐ **BRIEF** on appeal in this application attached.
- 3 ☐ An **ORAL HEARING** is respectfully requested under Rule 194 (due two months after Examiner's Answer -- unextendable).
- 4 ☒ Reply Brief is attached (due two months after Examiner's Answer -- unextendable).

5. FEE CALCULATION:		Large/Small Entity	
If box 1 above is X'd, see box 12 below <u>first</u> and decide: enter		\$500/250*	\$
If box 2 above is X'd, see box 12 below <u>first</u> and decide: enter		\$500/250*	\$ 500
If box 3 above is X'd, see box 12 below <u>first</u> and decide: enter		\$1000/500*	\$
If box 4 above is X'd, enter nothing		- 0 - (no fee)	
6. Original due date: August 14May 15, 2007			
7. Petition is hereby made to extend the original due date to cover the date this response is filed for which the requisite fee is attached		(1 mo) \$120/\$60 (2 mos) \$450/\$225 (3 mos) \$1020/\$510 (4 mos) \$2160/\$1080	+
8. Enter any previous extension fee paid [] previously since above <u>original</u> due date (item 6); [] with concurrently filed amendment		-	
9. Subtract line 8 from line 7 and enter: Total Extension Fee			
9a. Terminal Disclaimer Fee			\$
10. TOTAL FEE ATTACHED =			\$0

11. ☐ *Fee NOT required if/since paid in prior appeal in which the Board of Patent Appeals and Interferences did not render a decision on the merits.

CHARGE STATEMENT: The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficient fee only) now or hereafter relative to this application and the resulting Official document under Rule 20, or credit any overpayment, to our Account/Order No. 50-1130/95-418 for which purpose a duplicate copy of this sheet is attached. This CHARGE STATEMENT does not authorize charge of the issue fee until/unless an issue fee transmittal form is filed.

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Docket No.: 95-418

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: DODRILL et al.

Examiner: Stange, A.

Application No.: 09/605,848

Group Art Unit: 2153

Filed: June 29, 2000

Date: January 28, 2008

For: IP UNIFIED AGENT USING AN XML VOICE ENABLED
WEB BASED APPLICATION SERVER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Applicants submit this Reply Brief to the Examiner's Answer mailed November 28, 2007 with regard to the Appeal from the rejection of claims 1, 3, 5-18, 20, 22-28, 30-39 and 41 of the above-identified application.

RESPONSE TO EXAMINER'S ANSWER

The Examiner maintains the rejection of claims 1, 3, 5-18, 20, 22-28, 30-39 and 41 as being unpatentable over Maurille in view of Jindal.

In the Examiner's Answer the Examiner admits that Maurille "does not specifically disclose that the 'application session of the second party' is established by another application session distinct from the first application instance, since Maurille discloses only a single server application 114." Appellant agrees that a single instance 114 controls all messaging sessions for all users via the database 108 in Maurille.

The Examiner cites Jindal wherein a system is provided for balancing client requests among multiple instances of an application. The Examiner contends that, "one of ordinary skill in the art would have seen a benefit to upgrading Maurille's system with multiple applications instances, as taught by Jindal, in order to increase the number of clients that the system to [sic] service."

Again, Appellant submits, absent hindsight, that even if such a modification were made to Maurille, the hypothetical combination would not result in the claimed invention.

First, Jindal teaches a load balancing policy for distributing client requests for an application among a plurality of instances of the application operating on a plurality of servers. A policy is selected for choosing a preferred server, from a plurality of servers 110, 112, 114, the servers offering an application instance 104 based on a characteristic of the application instance 104. In Jindal, the load on a single server may be reduced by choosing another server offering the application instance. Thus, Jindal merely teaches that it is known to implement load balancing by executing multiple application instances on respective servers, where access to servers can be prioritized.

Even if Maurille were modified by employing the teachings of Jindal, the modification would not result in the claimed subject matter, since there would merely be multiple server applications 114 in Maurille, however any "interrupting" would only occur between users that are registered within the same application instance. The claims recite causing a browser to request interruption of a present application session of the

second party established by another application instance distinct from the first application instance. The message box (which the Examiner considers to be the claimed interrupting step) requesting that the user (e.g., Mit) stop the current session and to enter talk session with a requesting User (e.g., Arlene) would still occur in a server application 114 of the multiple server applications. Other users, however, according to Jindal, would be registered with another server application and unable to communicate with the users of the first application (e.g., Arlene or Mit).

The Examiner states, “The advantage Jindal’s teaching provides is the ability to increase the number of participants that the system may adequately service”. The Examiner further states, “Merely replicating Maurille will not accomplish this goal, since it would result a plurality of distinct ‘messaging systems’ rather than a single ‘messaging system’ with increased capacity”. Appellant submits that providing a plurality of distinct messaging systems in Maurille would satisfy the goal of Jindal, since clients could access multiple servers and thus not have to wait until a single server can accept another client request. In fact, Jindal states at column 1, lines 21-23 that an “organization may employ multiple servers offering the same application or service in which case the client may be connected to any of the multiple servers in order to satisfy the client’s request.”

Furthermore, the Examiner contends that, “In order to preserve the functionality of Maurille when using multiple servers, a client being serviced on one server would have been able to interrupt a client being serviced by an additional server.” Since the Examiner’s basis for his obviousness rejection is to increase capacity, there is no rational basis to permit a client to “interrupt” an active browser session. In fact, the only basis is the improper ex post reasoning. “A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.” *KSR Int’l v. Teleflex, Inc.* No. 04-1350, Slip. op. at 17, 82 USPQ2d 1385, 1397 (U.S. Apr. 30, 2007) (citations omitted). It is well settled that the content of the prior art (and any *interpretation* of the prior art) must be determined at the time the invention was made to avoid hindsight. See MPEP 2141.01(a)(III), Rev. 6, Sept. 2007, at page 2100-121: “It is difficult but necessary that the decisionmaker forget what he or she has been taught ... about the claimed invention and cast the mind back to the time

the invention was made (often as here many years), to occupy the mind of one skilled in the art "(quoting *Gore v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert denied*, 469 US 851 (1984)).

Appellant submits that the Examiner is not "preserving the functionality of Maurille" but is significantly changing Maurille's functionality based on improper hindsight. Maurille requires a single instance 114 controlling all messaging sessions for all users (see column 6, lines 44-57 of Maurille). Modifying this single instance to include multiple instances with a first instance interrupting a distinct second instance, as suggested by the Examiner, would destroy the invention of Maurille and would therefore be improper. See Ex parte Hartmann, 186 U.S.P.Q. 366, 367 (P.T.O.B.O.A. 1974) (reversing rejection when modification would destroy basis for invention in one or two references).

Secondly, assuming the Examiner's sketch on page 15 of the Answer is correct, the combination would still not result in the claimed feature of generating a HTML page, originating in a first application instance, causing the browser to request interruption of a present application session of the second party, established by another application instance distinct from the first application instance. The browser that causes the interruption is the browser in use by the second party. The hypothetical combination would merely provide a pop-up window (message box) on the display of the user which would be a new window separate and distinct from the browser in use by the second party for the present application session.

This may be a subtle distinction, but it is an important distinction since Maurille assumes a user would be able to see the new window pop-up. There is no guarantee in Maurille that the window would be seen by the user. The window could be behind an active window in use by the second party. The advantage of the claimed invention is that it can be employed for HTML display browsers and/or for proxy browsers. As described on pages 6 and 7 of the specification, the proxy browser can be configured for providing audio only. Thus, Maurille's message box would be ignored by a proxy browser user since in the proxy browser, only one session is in use at one time.

For the reasons set forth above and in the Brief, it is clear that the Appellant's claims 1, 3, 5-18, 20, 22-28, 30-39 and 41 are not obvious over Maurille in view of

Jindal. Accordingly, it is respectfully submitted that the present invention should be properly patentable over these references. It is respectfully requested that this appeal be granted and that the Examiner be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Stemberger", written in a cursive style.

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